

MEMORANDUM OF UNDERSTANDING

by and among

CADIZ INC.,

and

THE COUNTY OF SAN BERNARDINO

Related to

County Ordinance for Desert Groundwater Management

This Memorandum of Understanding (“MOU”) is made and entered into on November \_\_, 2002, by and between Cadiz Inc. (“Cadiz”), a Delaware corporation and the County of San Bernardino (“County”), a political subdivision of the State of California.

RECITALS

1. In 1993, the County certified a Final Environmental Impact Report, adopted Findings, Facts in Support of Findings, and Statement of Overriding Considerations, and adopted a Mitigation Monitoring Program (“MMP”) under CEQA for the Cadiz Agricultural Program.
2. In addition, the County approved Conditional Use Permit 95-0015 (as revised) on January 31, 2000, for the Cadiz Agricultural Program. Among the conditions to the Conditional Use Permit, and included in the MMP, are Mitigation Measure WR6, which sets forth the requirements for a Groundwater Monitoring Plan (the “GMP”) and Mitigation Measure WR7, which sets forth a constraint on cultivation.
3. The County adopted a Desert Groundwater Management Ordinance, San Bernardino County Code, Title 3, Division 3, Chapter 6, Article 5, sections 33.06551 *et seq.* (the “Ordinance”) that is intended to protect groundwater resources within the unadjudicated, unincorporated desert regions of the County, including the health of individual aquifers, and the continued ability of those aquifers to store and maintain water.

4. The Ordinance does not apply to the operation of groundwater wells where the operator has developed a groundwater management, monitoring and mitigation plan approved by the County and the operator and the County have executed a memorandum of understanding that complies with the provisions of the Ordinance.

5. The County and Cadiz agree that implementation and compliance with the GMP for the Cadiz Agricultural Program meets the requirements of the Ordinance and, upon the execution of this MOU, the operation of groundwater wells for the irrigation of crops and incidental agricultural uses, as contemplated by the Cadiz Agricultural Program, will be exempt from the permitting requirements of the Ordinance.

#### OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein by reference.

2. **Definitions.** The following terms shall have the following meanings as used herein:

(a) “Cadiz Agricultural Program” means Cadiz’ agricultural operations located in the Cadiz Valley area of eastern San Bernardino County, as approved by the County in accordance with: (i) the conditional use permit (“CUP”) No. 95-0015/CN966-169N/02141CU1 issued by the County for a seasonal workers’ bunkhouse with separate rest room/shower building on 2.6 acres; (ii) the County’s Final Environmental Impact Report dated October 1993 (SCH # 89020203); and (iii) the County’s Findings, Facts in Support of Findings, and Statement of Overriding Considerations Regarding Final Environmental Impact Report for Cadiz Valley Agricultural Development.

(b) “Groundwater” means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.

(c) “Groundwater Monitoring Plan” or “GMP” means the Groundwater Monitoring Plan prepared by Cadiz and submitted to the County pursuant to Mitigation Measure WR6 of the MMP.

(d) “Mitigation Monitoring Program” or “MMP” means the Mitigation Monitoring Program, as set forth in the Final EIR for the Cadiz Agricultural Program.

(e) “Ordinance” means the Desert Groundwater Management Ordinance, San Bernardino County Code, Title 3, Division 3, Chapter 6, Article 5, sections 33.06551 *et seq.* (the “Ordinance”), whether effective before or after the execution of this MOU.

### **3. Plan Implementation and Notice.**

(a) Cadiz shall implement and comply with the GMP and the MMP in accordance with their terms.

(b) Cadiz shall develop additional agricultural land in accordance with Mitigation Measure WR7.

### **4. Application of County Ordinance.**

(a) The parties agree and acknowledge that compliance by Cadiz with the provisions of this MOU satisfies the requirements for an exclusion from the scope of the Ordinance, pursuant to the Scope and Exclusions section of the Ordinance, with respect to the development of 9,600 acres for agricultural uses (including but not limited to the growing of vineyards and citrus) and the construction of related facilities (including but not limited to groundwater wells, irrigation pipelines and systems, housing facilities, cooling

and cold storage structures, and warehouses) as appropriate to implement the Cadiz Agricultural Program.

(b) Implementation and compliance with the MMP, including but not limited to, Mitigation Measure WR6, WR7 and the GMP shall constitute compliance with a County-approved groundwater management monitoring and mitigation plan associated with the extraction of Groundwater, within the meaning of the Ordinance.

5. **Term.** This MOU shall be effective from the date first written above, and shall continue in full force and effect during any agricultural operations under the Cadiz Agricultural Program, unless earlier terminated by (1) unanimous written agreement of the parties; or (2) pursuant to judicial proceedings brought by any of the parties.

6. **Construction and Interpretation.** It is agreed and acknowledged by the parties that this MOU has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this MOU. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOU.

7. **Severability.** The invalidity, illegality or unenforceability of any provision of this MOU shall not render the other provisions unenforceable, invalid or illegal.

8. **Governing Law.** This MOU shall be interpreted and enforced pursuant to the laws of the State of California.

9. **Modifications.** This MOU can only be modified by a written instrument executed by all parties.

10. **Entire MOU.** This MOU contains the entire understanding of the parties related to their interests, obligations, and rights in connection with the

subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

11. **Assigns and Successors.** This MOU shall be binding upon, and inure to the benefit of, the assigns or successors-in-interest of the parties herein.

12. **No Third Party Beneficiary.** The parties to this MOU do not intend to create any third party beneficiaries to this MOU, and expressly deny the creation of any third party beneficiary rights hereunder toward any person or entity.

13. **Time.** Time is of the essence in the performance of each and every term of this MOU.

14. **Waiver.** The waiver or failure to declare a breach as a result of the violation of any term of this MOU shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel, forgiveness or waiver by any party to that term or condition.

15. **Captions.** The paragraph captions in this MOU are for convenience only and shall not be used in construing the MOU.

16. **Additional Documents.** Each party agrees to make, execute, and deliver any and all documents and to join in any application or other action reasonably required to implement this MOU.

17. **Notice.** Any and all communications and/or notices in connection with this MOU shall be hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Cadiz	Cadiz Inc.
	Attn: Chief Executive Officer
	100 Wilshire Boulevard, Suite 1600
	Santa Monica, CA 90401

County                      County of San Bernardino  
                                 Attn: County Administrator  
                                 385 N. Arrowhead Avenue, Fifth Floor  
                                 San Bernardino, CA 92415

The parties may change the foregoing addresses by providing written notice in compliance with this paragraph.

**18. Indemnification.** Cadiz shall indemnify and defend, at its sole expense, any action brought against the County, its agents, officers, or employees, challenging the validity of this Agreement. Cadiz shall reimburse the County, its agents, officers or employees, for any court costs and attorney's fees which the County, its agents, officers or employees may be required by court to pay as a result of such action. The County may, at its sole discretion, participate, at its own expense, in the defense of any such action but such participation shall not relieve Cadiz of its obligation under this Agreement.

**19. Authority.** Each party represents and warrants to the others that (a) it has the requisite legal capacity and authority to enter into and fully perform each and all of its obligations under this Agreement and (b) this Agreement does not in any way violate any covenant, contract, agreement, instrument or understanding by which such party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

**County:**

County of San Bernardino

Approved as to form.

By: \_\_\_\_\_  
Fred Aguiar  
Chairman, San Bernardino  
County Board of Supervisors

By: \_\_\_\_\_  
Robin C. Cochran  
Deputy County Counsel

**Cadiz**

Cadiz Inc.

Approved as to form.

By: \_\_\_\_\_

Stanley E. Speer  
Chief Financial Officer

By: \_\_\_\_\_

Jennifer Hanks Painter  
Vice President and General  
Counsel